CONTRACTS—OFFER AND ACCEPTANCE—MISTAKE IN TRANSMISSION OF OFFER BY TELEGRAM.—The National Bank of Powell, Wyo., telegraphed to the plaintiff an offer to sell a car of potatoes at $1.35 per 100. Through a mistake in the transmission of the telegram it read when delivered: "Can furnish one car clean potatoes at *once* $.35 per 100 f. o. b. Powell." The plaintiff accepted the offer and the Wyoming bank shipped the potatoes. *Held,* that the sender of the telegram was bound by the message as delivered and that a contract was completed on the basis of $.35 per 100. *J. L. Price Brokerage Co. v. Chicago B. & Q. R. R. Co.* (1917, Mo. K. C. App.) 199 S. W. 732. See COMMENTS, p. 932.

CONTRACTS—PERSONAL SERVICE—GROUNDS FOR DISMISSAL.—The plaintiff, employed as superintendent of gas engine shops, absented himself for several days from his work, for "diversion strictly personal," at a time when his presence was needed for the completion of delayed orders. He was dismissed shortly after, and in the subsequent bankruptcy of his employer, filed a claim for damages accruing from the alleged breach of his employment contract. *Held,* that the claim could not be allowed because an employee's voluntary and unnecessary absence from duty at a time when his presence was necessary to the success of his employer's business was ground for discharge; and if such ground in fact existed it was immaterial whether it was assigned, or even known to the employer, at the time of the dismissal. *Farmer v. First Trust Company* (1917, C. C. A. 7th) 246 Fed. 671.

Any act or neglect by an employee which injures, or tends to injure, his employer's business, is ground for the employee's dismissal. *Deane v. Cutler* (1892, Buff. Super. Ct.) 20 N. Y. Supp. 617; *Kidd v. American Pill & Medicine Co.* (1894) 91 Ia. 261, 59 N. W. 41; *Pearce v. Foster* (1886, C. A.) 17 Q. B. D. 536. This doctrine also applies to those serving in a supervisory capacity. *Armour & Cudahy Packing Co. v. Hart* (1893) 36 Neb. 166, 54 N. W. 262; *Norton v. McMurtry* (1860, Exch.) 2 L. T. Rep. N. S. 297. Yet the tendency is not to hold this class of employees as strictly for their time as the clerk or common laborer. *Turner v. Kouwenhoven* (1885) 100 N. Y. 115, 2 N. E. 637; *Shaver v. Ingham* (1886) 58 Mich. 649, 26 N. W. 162. An employer is protected in dismissing an employee if a justification exists at the time, even though he does not state it, or know of its existence; and though he assigns another ground. *Green v. Edgar* (1880, N. Y. Sup. Ct.) 21 Hun 414; *Sterling Emery Wheel Co. v. Magee* (1890) 40 Ill. App. 340; *Baillie v. Kell* (1838, Eng. C. P.) 4 Bing. N. C. 638. Nor is the employer's motive of moment. *McKeithan v. Telegraph Co.* (1904) 136 N. C. 213, 48 S. E. 646; *Jackson v. New York Medical School* (1893, N. Y. C. P.) 6 Misc. 101, 26 N. Y. Supp. 27; *Boston Deep Sea Fishing Co. v. Ansell* (1888, C. A.) 39 Ch. Div. 339. Though practically all the cases raising the point relate to personal service, this would seem to be merely a sound application of the general doctrine of contracts, that a breach by one party releases the other from further performance. Conversely, of course, the discharge cannot be justified by acts or circumstances subsequently arising, for in such a case the employer, by the discharge, has committed the first breach. *Gerardo v. Brush* (1899) 120 Mich. 405, 79 N. W. 646. And a breach by the employee, as a ground of discharge, may be waived by condonation. *Spindel v. Cooper* (1905, N. Y. App. T.) 46 Misc. 569; 92 N. Y. Supp. 822. Two early Massachusetts cases indicate a contrary tendency, holding that a church or parish may justify the dismissal of its pastor only on those grounds which were alleged at the time of the dismissal. *Thompson v. Catholic Society* (1827, Mass.) 5 Pick. 469; *Whitmore v. Fourth Congregational Society* (1854, Mass.) 2 Gray, 306. These seem to be the only cases in America relating to the discharge of ministers; but they are so opposed to the current of authority as to warrant the expectation that even in Massachusetts they would now be over-

ruled or confined to their exact facts. Authority is lacking on the question of whether the servant, in his turn, could set up as a defence for abandonment, grounds not assigned when he left; but no reason appears why the doctrine should not be equally applicable to such a case. See Woods, *Master & Servant,* sec. 121; *Thayer v. Wadsworth* (1837, Mass.) 19 Pick. 349.

CRIMINAL LAW — CONSPIRACY — INDUCING RESISTANCE TO SELECTIVE DRAFT ACT.—The Act of Congress of June 15, 1917, known as the Espionage Act, provides in section 3 for the punishment of any person who, "when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States." The defendant was indicted under this provision for advising registrants under the Selective Draft Act not to report for duty when called. *Held,* that the words "military forces" in the above provision of the Espionage Act included those who had registered under the Selective Draft Act and had received serial numbers, though not yet called by the local exemption boards for examination, and that advising such persons not to report when called constituted a violation of section 3 of the Espionage Act. *United States v. Sugarman* (1917, D. Minn.) 245 Fed. 604.

Section 37 of the federal Criminal Code (Comp. St. 1916, sec. 10201) makes it an offense to "conspire . . . to commit any offense against the United States." Section 332 (Comp. St. 1916, sec. 10506) provides that "whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission, is a principal." Section 6 of the Selective Draft Act of May 18, 1917, makes it a misdemeanor for any person to "evade . . . the requirements of this Act." The defendants were indicted under these provisions for conspiring to induce persons not to register under the Selective Draft Act whose duty it was to do so. *Held,* that the conspiracy alleged was indictable under the sections above quoted. *Goldman v. United States* (1918) 38 Sup. Ct. 166.

There seems to have been an oversight on the part of Congress in failing to provide specifically in the Selective Draft Act for the offense of seeking to persuade another to evade or disobey the provisions of the Act. The attempt in the *Sugarman* case to bring this offense under the Espionage Act seems hardly sustainable. One wonders if the same court would hold that a registrant not yet called for examination who became intoxicated or committed a breach of the peace could be tried by court martial. The view taken by the court not only does violence to the natural meaning of words and to common sense, but is contradicted, at least by implication, by the Selective Draft Act itself, which distinguishes between registration and draft, and provides in section 2 that "all persons drafted into the service of the United States . . . shall, *from the date of said draft* . . . be subject to the laws and regulations governing the Regular Army." The decision in *United States v. Hall* (1918, D. Mont.) 248 Fed. 150, contrary to the *Sugarman* case, that "military or naval forces" in the Espionage Act means those organized and in service, is therefore to be commended.

The procedure adopted in the *Goldman* case to reach a similar offense rested on a sounder basis. At first sight it might seem that a distinction was overlooked between a conspiracy to do something and a conspiracy to induce another to do it. Chief Justice White's opinion does not help to clear up this difficulty, by paraphrasing the statute and speaking of a conspiracy "to *bring about* an illegal act." The real ground for sustaining the indictment was that, in the light of section 332, above quoted, the conspiracy contemplated the actual commission of a substantive offense against the United States by one or more of the conspirators. Under that section, not only the person persuaded not to